DETAILED ACTION

Claim Rejections – 35 USC § 101

The Examiner stated that claims 17-48 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The Examiner stated that claims 18-25, 27-33, 35-38, 40-45 and 47-48 are rejected for being dependent upon rejected claims 17, 26, 34 and 39 respectively.

Applicant has amended independent claims 17, 26, 34 and 39 such that they are directed to statutory subject matter under 35 U.S.C. 101. Applicant respectfully requests removal of this rejection. Applicant believes independent claims 17, 26, 34 and 39, as well as the claims that depend from them 18-25, 27-33, 35-38, 40-45 and 47-48, are in condition for allowance and respectfully requests they be passed to allowance.

Claim Rejections

The Examiner stated in the Office Action Summary that Claims 1-62 are pending in this action. The Examiner has also stated in the Office Action Summary that Claims 1-62 are rejected. However, claims 61 and 62 were not referred to as rejected in the Office Action under the rejection under 35 U.S.C. 102(e) or the rejection under 35 U.S.C. 103. Thus, Applicant will await further notice to more explicitly deal with these claims.

Claim Rejections – 35 USC § 102

The Examiner stated that claims 1-3, 6-7, 9-10, 15, 17-18, 20-24, 26, 31-32, 34-38, 46, 48-49, and 57-60 are rejected under 35 U.S.C. 102(e) as being anticipated by O'Brien (US 6587831).

The Examiner has rejected substantially all the independent claims, including claims 1, 9, 17, 26, 34, 46, 49 and 57 under 35 U.S.C. 102(e) as being anticipated by O'Brien (US 6587831). The independent claims have been relatively amended to include the following limitation: Claim 1:

> accessing an employee violations sub-module comprising a software
> configuration that is executable from the schedule generator, wherein the employee
> violations sub-module provides an interface for the manager to define employee
> violations in a workplace system, the employee violations sub-module communicates

with at least the database interface software to obtain and/or record information on an employee's schedule record and the employee data record;

Claim 9:

at least one employee violations sub-module in communication with the data storage device and in communication with the computing device to obtain and/or to modify the employee schedule record according to the at least one employee violations sub-module; and

Claim 17:

creating at least one employee violations sub-database, via a first input, in communication with the database to delete and/or to modify the work schedule according to the at least one employee violations sub-database;

Claim 26:

determining an output based on the input whether the signing-up employee is listed an employee violations sub-database to decline and/or to modify the signing-up employee work shift according to the employee violations sub-database;

Claim 34:

determines whether said response received is subject of an employee violations record and not available to accept said response;

Claims 46, 49 and 57 have similar limitations in that they deal with an employee violation.

Support for these limitations can be found at least at page 12 and 13 and is not found in the prior art references. Even if such a limitation were found in a prior art reference, it would not pertain to the present invention as set forth above.

As stated in the claims, the employee violations database stores data involving employee infractions of the workplace rules or obligations. As stated by the claims, the databases within the methods, system, apparatus and computer-readable program of the present invention take into account the requested schedules by the employees, the availability of the employees, the ability of the employees to change positions and/or time schedules with other employees, among many other tasks. Applicant's invention also takes into account the employees standing, via the employee violations database, in the workplace when the employee is requesting a schedule change.

O'Brien does not cover employee violations in his patent. Nor does O'Brien have a database that specifically inputs violation data and stores it for later use when an employee requests certain scheduling requirements. This aspect of Applicant's invention is not mention anywhere in the O'Brien patent, nor is it inherent in the patent.

Thus, as stated in MPEP § 2131, "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Applicants respectfully submit, as detailed above, O'Brien does not, either expressly or inherently, teach or suggest many limitations recited in the pending claims.

For the reasons set forth above, Applicant believes the independent claims, as well as the claims that depend from them, are in condition for allowance and respectfully requests they be passed to allowance.

Claim Rejections – 35 USC § 103

The Examiner stated that claims 4-5, 12-14, 16, 25, 27-30, 39-45, 52-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Brien (US 6587831) in view of Lakritz et al (US 2005/0137925).

A statement that modifications of the prior art to meet the claimed invention would have been "well within the ordinary skill of the art at the time the claimed invention was made" because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a prima facie case of obviousness

without some objective reason to combine the teachings of the references. *Ex parte* Levengood,
28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993). In the present case, there is no reason to
combine the references. *Lakritz et al. was published one year, two months and twenty-six days
after the filing of Applicant's invention.* According to 35 U.S.C. 103(a) "a patent may not be
obtained ... if the differences between the subject matter to be patented and the prior art are such
that the subject matter as a whole would have been obvious at the time of the invention was made
to a person having ordinary skill in the art in the art to which said subject matter pertains
(emphasis added)". Lakritz et al. was not available to Applicant for the subject matter to be
obvious as a whole. While the 102(e) date is earlier that Applicant's filing, the application was
not published prior to the filing of Applicant's invention thereof and therefore, not available as a
103(a) reference.

The correct law is stated as "any *need or problem known in the field of endeavor at the
time of the invention* and addressed by the patent can provide a reason for combining the
elements in the manner claimed." *KSR International Co. v Teleflex Inc.*, 550 U.S. 82 USPQ2d
1385, 1397 (2007). Thus a reference in a field different from that of Applicant's endeavor may
be *reasonably* pertinent if it is one which, because of the matter with which it deals, logically
would have commended itself to an inventor's attention *considering his or her invention as a
whole* (emphasis added).

The Examiner stated that claims 8, 11, 19, 33, 47 and 50-51 are rejected under 35 U.S.C.
103(a) as being unpatentable over O'Brien (US 6587831). Even if Lakritz et al. was a viable
reference under 35 U.S.C. 103(a), claims 1, 9, 17, 26, 34, 46 and 49, as set forth below, are
patentably distinct from Lakritz et al. under 37 CFR 1.111(b). Therefore, any claim depending
therefrom is patentably distinct from Lakritz et al.

While Lakritz et al. ("Lakritz") describes a resource scheduling and monitoring system,
Lakritz does not take into account employee violations as a part of the resource scheduling and
monitoring. *See Abstract.* Lakritz provides for "constraints" in the specification which are
defined as "time limits", "conditional constraints", "preferences" and "regularity". In paragraph
54 and 55, Lakritz discusses verification of constraints. More specifically, Lakritz states "at any
point during the process of constructing the a schedule solution the user can check whether the

current partial or complete solution violates any active constraints". This is not what is stated in Applicant's claims. Applicant's claims specifically point out "an employee violation database" to be used when constructing the schedule. While, the "violation" as used in Lakritz is meant as a violation in the constraints as set forth in the algorithms of the system. For example, if Bob works Thursday, he cannot work Friday. Thus, if Bob is on the schedule for both Thursday and Friday, it is a violation of the scheduling constraint in Lakritz.

Moreover, Lakritz, beginning at paragraph 706 discusses attendance, but does not discuss workplace infractions. Lakritz discusses attendance in a manner of substitution of employees, i.e. a database of substitute employees. Applicant's invention is patentably distinct in that it discusses attendance in the context of workplace violations, along with other infractions that are taken into account when employees are either scheduled or requesting a preferred schedule.

For the reasons set forth above, Applicant believes the independent claims, as well as the claims that depend from them, are in condition for allowance and respectfully requests they be passed to allowance.

Respectfully submitted,

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